



Applying Isolation &  
Quarantine Scenarios  
Involving Tribes and  
First Nations

**Great Lakes Border Health  
Initiative Conference**  
**Niagara Falls, New York**  
**June 15, 2007**

## Welcome

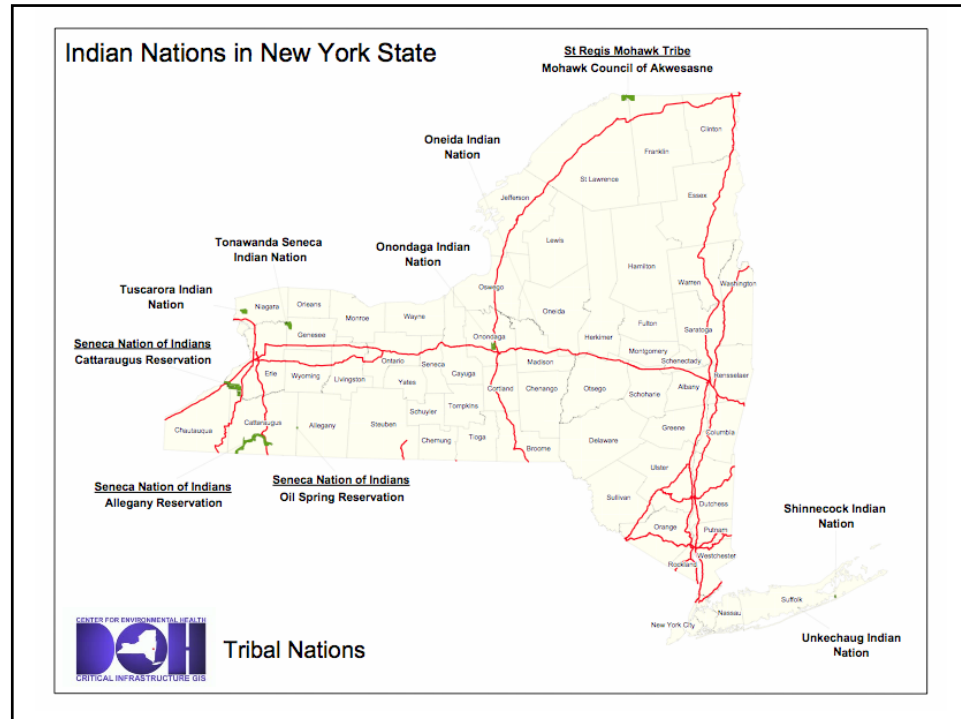
- Introduction of Presenters
- Information about represented tribes
- Legal Framework (United States)
- Panel discussion of scenarios
- Summary and questions

## Panelists

- Lynne Thompson, Emergency Preparedness Coordinator  
St. Regis Mohawk Health Services  
Akwesasne, New York
- Adrian Stevens, BS, MPH, Tribal Health Director  
Seneca Nation of Indians Health Department  
Salamanca, New York
- Matthew Patterson, Emergency Manager  
Tuscarora Nations Environment Program  
Sanborn, New York

## Facilitators

- Denise Chrysler, JD  
Director, Office of Legal Affairs  
Michigan Department of Community Health  
Lansing, Michigan
- Steve Shakman, JD  
Legal Affairs Coordinator  
Minnesota Department of Health  
St. Paul, Minnesota
- We wish to acknowledge and thank Richard Buck for all of his assistance in organizing this session



## Understanding the legal status of Indian Tribes

- "One of the greatest obstacles faced by the Indian today in his drive for self determination and a place in this nation is the American public's ignorance of the historical relationship of the United States with Indian tribes and the lack of general awareness of the status of the American Indian in our society today. "

*A report by the U.S. Commission of Civil Rights (1981) citing the congressionally chartered American Indian Policy Review Commission*

## Fundamental Principles

- Sovereignty of Indian tribes
- Plenary authority of the federal government with regard to Indian tribes
- Corresponding limits on state authority

## Sovereignty of Indian tribes

- Power of self-government; self-determination
- Tribal Indians possess a separate political identity and status (“political status”)
- Federally recognized vs. “historic” (non-recognized)
- Sovereign immunity
  - Tribal nations have immunity against many lawsuits
  - Extends to tribal business organizations, off-reservation activities
  - Can be waived

## Plenary authority of federal government regarding Indian tribes

- U.S. Constitution established the supremacy of federal power, to the exclusion of the states, in all matters pertaining to relations with Indian tribes.
- The courts have held that the authority of the federal government over questions of Indian affairs is superior to that of both the states and that of the tribes.
- Exceptions – Congress can grant authority over tribes to states (e.g. “Public Law 280” states, which include Minnesota and Wisconsin)

## Limits on state authority

- One obvious corollary to the plenary federal authority over Indians is that state jurisdiction and authority with respect to Indian tribes, and over tribal members and tribal lands within the boundaries of reservations, is extremely limited.

## Common perception regarding state authority

- Tribes are within the geographic boundaries of the state
- Tribal members are state citizens

Therefore, tribes and tribal members are subject to state authority

## State interests for asserting authority on reservation

- Protecting citizens (outside reservation) from problems that originate on reservation
- Protecting non-tribal members who live on reservations
- Protecting non-tribal members who visit or work on reservations (e.g. hotels, restaurants, casinos, construction projects)

## Confusing case law regarding state authority on reservation

- ‘(t)he policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history.’ ... This policy was first articulated by this Court 141 years ago when Mr. Chief Justice Marshall held that Indian nations were ‘distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guarantied by the United States.

*McClanahan v Arizona Tax Commission*, 411 US 164, 168 (1973)  
(citations omitted)

## Confusing case law, continued

- Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as “sovereign” entities, it was “long ago” that “the Court departed from Chief Justice Marshall's view that ‘the laws of [a State] can have no force’ within reservation boundaries. ... “Ordinarily,” it is now clear, “an Indian reservation is considered part of the territory of the State.”

*Nevada v Hicks*, 533 U.S. 353, 361-362 (2001) (citations omitted)

## Limits on state authority

- State authority over Indian tribes, tribal lands, and over tribal members within the boundaries of Indian reservations is extremely limited
- Frequent litigation between states and tribes over jurisdiction
- Case law caveat: Jurisdictional decisions vary by subject matter, meaning no coherent body of law regarding state / tribal jurisdiction

## Limits on state authority on Indian Territory

- State has no jurisdiction over Indian people or their property within the boundaries of Indian land
  - Boundary disputes
- Tribal authority:
  - Ability to prosecute their own members as well as other tribes' members
  - Retain sovereign immunity
  - Retain general police powers over their jurisdictions



## Limits on state authority on Indian Territory, continued

- Exceptions:
  - Non-Indians on Indian land
  - Congress can consent to allowing states to have some aspect of jurisdiction on Indian land (e.g. Public Law 280)
  - Tribes can consent to sharing with states some aspects of jurisdiction on Indian land
    - E.g. elevator inspections
    - Cooperative agreements

## Limits on state authority: Historic or “non-recognized” tribes

- Some Indian bands or groups are not currently acknowledged by the United States.
- State quandary how to treat:
  - Some courts: group may continue to exist as a tribe, retaining its powers of limited sovereignty
  - Other courts: to the extent that such groups have voluntarily ceased to exist as governing entities, and have surrendered their sovereignty, they no longer constitute Indian tribes.

## State/Tribal authority: Non-Indians on Indian Territory

- State possesses jurisdiction for most purposes over non-Indians within the reservation.
  - Limitations - actions that interfere with tribal sovereignty or internal affairs
- Tribes possess some civil jurisdiction over non-Indians within the reservation, but have criminal jurisdiction only over Indians for crimes committed on tribal land.
  - Standard: Necessary to protect health, welfare, economic interests or political integrity of the tribal nations


## Intergovernmental cooperation and coordination

- Limits on State-Tribal Compacts
  - Concern: Agreements that invade or impinge upon sovereignty, or which convey governmental powers from one sovereign to the other
- No prohibition on intergovernmental cooperation and coordination
- No prohibition on cooperative agreements
- No prohibition on contracts to provide services, resources
- No prohibition on mutual aid agreements with local government

## Panel Discussion of Hypothetical Scenarios


1. The city of Hudson Health Department is flooded with calls from individuals with norovirus like symptoms. Most of these individuals had been at the Tribal Nation Casino within the last 12-24 hours.

- Who has the authority to conduct a foodborne disease investigation at the casino?
- Who has the authority to close the food service establishment?
- If some of these ill individuals are tribal residents, who contacts them during an outbreak investigation? Who contacts the city residents?



2. Two tribal members are sharing an apartment in Hudson while they are attending New Hudson University. One of the students becomes extremely ill and presents to the emergency room with high fever, cough, shortness of breath, difficulty breathing, sore throat, and muscle aches. The student reports that he returned 10 days ago from travel in Hong Kong

- Who should the emergency room notify?
- If necessary, who has the authority to isolate the sick student?
- Who has the authority to quarantine the student who was potentially exposed?



3. A member of the local tribe marries a woman who is not American Indian. The couple lives in the local Indian community. The non-native wife has infectious tuberculosis that is drug resistant. She refuses to take her medications because of the unpleasant side effects, and goes about the community potentially exposing others.


- Who has the authority to mandate isolation & treatment?
- What if the wife still does not want to comply?
- Who conducts the contact investigation?
- How is the investigation conducted if there are contacts not living on tribal lands/territories?

4. The World Health Organization and the CDC declare that a pandemic of influenza is underway. There are cluster outbreaks throughout the state of New York. The governor declares a State of Emergency.

- Does this State of Emergency apply to tribal lands/territories?
- If necessary, who has the authority to organize a mass dispensing site on tribal lands/territories?


5. A husband and wife are both admitted to Hudson Hospital in Hudson City with symptoms of pneumonia. Based on laboratory tests, they are both diagnosed with Legionnaires' disease. Several other people in surrounding counties are diagnosed with Legionnaire's disease. Investigations by the local health departments reveal that all of these individuals had attended a two-day conference at the local tribe's conference center a week ago, located on the reservation.

- Would the tribe lead the investigation, or ask for assistance from the local health department?
- What is the procedure for acquiring the guest list from the conference center that is needed to identify potential cases?



6. A husband and wife who are both Mohawk live on the Akwesasne Reservation on the US/CA border. The husband is from the St Regis Mohawk portion of the tribe (SRMT-US side of international border) and his wife is from the Mohawk Council of Akwesasne portion of the tribe (MCA-CA side of the international border). They both report upper respiratory problems including a severe cough, fever and body aches. Both have recently traveled to South America to an area with a high incidence of TB. The couple went to the clinic at St Regis and an initial skin test and chest x-ray is positive for tuberculosis.

- See next slide for questions



## 6. Hypothetical scenario questions

- What is the procedure for notifying MCA, local, state, province and federal (US & CA) health partners?
- Who has the authority on the reservation to mandate treatment and possible isolation of both the husband and his wife?
- Are Canadian public health authorities in both Ontario and Quebec notified?

## Summary & Questions

Thank you!

